

# ANSWER

## To the Scotch Papers

Delivered

In the House of Commons

in Reply to the Votes of both Houses

of the PARLIAMENT of England,

Concerning the disposall of the

Kings Person,

As it was spoken when the said

Papers were read in the House.

By Thomas Chaloner Esquire, A Member

of the House of Commons.

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Mr. Speaker

**Y**e have just now heard two Papers read before you from the Commissioners of Scotland the first concerning the disposall of the Kings Person; the other touching the distractions of the North, by reason (as they say) of the non-payment of their Army. I shall say nothing to the latter, because it hath been sufficiently answered by divers knowing members of this house. To the first I shall wholly apply my selfe, because little or nothing hath been said to that point.

The question then before you is, about the disposing of the Kings person; you say that he is to be disposed of as both houses of Parliament shall thinke fitting, but our brethren of Scotland say he is to be disposed of as both Kingdomes shall thinke fitting, and they fortifie their affirmation with these reasons.

They say that he is not onely King of England, but also King of Scotland, and as you have an interest in him, he being King of England, so have they no lesse interest in him, he being King of Scotland. And as they have not the sole interest in him, he being King of Scotland, because they acknowledge withall that he is King of England, so have not you the sole interest in him, he being King of England, because they desire you to remember, that he is also King of Scotland. So as neither Nation having a sole, but a joynt interest in his Person, they ought joyntly to dispose of it for the weale and benefit of both Kingdomes.

This I take to be the whole scope of their argument; which they have represented unto you under so many disguises, and as it were by multiplying glasses, inso much as the bare relating of it takes up three large sheets of Paper.

But while they debate this great question with you, touching the disposall of the Kings Person, and while they positively affirme that he is to be disposed of by the joynt consent of both Nations, give me leave to remember you that in the meane time, they dispose wholly of him themselves, and so have done for these six Moneths, and may for six Moneths longer for any thing I can gather out of these Papers.

Their Argument runs thus :

Where

Wherefore the Kingdome of Scotland hath an interest in their King  
there they may dispose of him: not so said but: *non est in potestate*  
But the Kingdome of Scotland hath an interest in their King being  
in England.

Therefore in England they may dispose of him.

Sir, This may seem at the first to come to be a faire and specious  
Argument; but let it be well considered, it will prove erroneous and  
fallacious. For in the major Proposition they understand one thing  
by the word King; and in the minor Proposition they understand  
another thing by the word King; and so here is a conclusion inferred  
which the premisses will not warrant.

For the clearing whereof, I pray Sir remember that this word King  
is of a various signification; sometimes it is taken in *abstracto*, that is  
for the Royall power, Function, and Office of a King; sometimes it is  
taken in *concreto*, that is for the man or person whom we call King.  
If their major Proposition be taken in the first sense, we shall never  
deny it them; may we shall acknowledge that the King of Scotland  
being taken in *abstracto*, we have nothing to doe with him at all, he is  
solely and totally theirs; God forbid that a King of Scotland going  
out of his Kingdome, should either make Scotland cease to be a  
Kingdome, or give any participation of interest to that Countrey  
where he doth reside; let his Person reside in the furthest parts of the  
earth, yet the Royall office and capacity of the King resideth still in  
Scotland; they have his Sword to do justice by, they have his Scepter  
to shew mercy by; they have his Scale to confirme what they please  
by; and they have his Lawes to governe by: and in this sense it is  
onely meant that the King is never under yeerly, never dies, cannot  
be deceived, can neither doe wrong, nor take wrong of any body;  
and in this sense we fight for King and Parliament, though the Per-  
son of the King be in opposition to both; & in this sense the returns  
and relis of the Kings Writs are *Conant per ipso apud Westmousteriam*,  
& *teste ipsa apud Westmousteriam*; let the Person of the King at the  
same time be in France, or the remotest Countrey of the world; but  
a King of Scotland taken in this sense is never out of Scotland, and  
therefore whereas they say in the minor Proposition, That the  
Kingdome of Scotland hath an interest in their King he being in  
England, this must needs be meant of a King in *concreto*, that is onely  
of the person of their King, and not of his Royall capacity; & in this  
sense we must deny that they have any thing at all to doe with him.  
For though the Royall office of the King of Scotland is solely to be  
disposed



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disposed of by the State of Scotland; yet it is not so with his Person. For *Persona sequitur locum*; and his Person must be disposed of by the Supreme power of that Countrey wheresoever he shall happen to abide. Suppose a King of Scotland should be in Spaine, will they say they have as great an interest to dispose of his Person there as in Scotland; I thinke they will not say so: and yet they did affirme last day at the Conference, that they had as good right to dispose of his person at Westminster, as they had at Edenburgh. But under their favour, England is as distinct a Kingdome from Scotland, as Spaine. It is as distinct in Laws, distinct in Priviledges, distinct in interest, it is neither subordinate, nor dependent of Scotland, and they can no more dispose of a King of Scotlands person, he being in England, then if he were in Spaine. I shall take this as granted for good Law, that let the Person of any Nation under the Sunne, which is in amity with England, happen to come into England, that person is forthwith a Subject of England. For he being protected by the Laws of England, he becomes thereby subject to those Laws; it being most certaine that *Proteccio* ~~in his subjectionem, & subiectio proteccionem~~, they being relatives, the one cannot stand without the other; and as no man can be said to be a father that hath no son, nor no man to be a husband that hath no wife, so no man can be said to be protected, that is not withall thereby subiected. And since without such protection every man may kill him, and destroy him; it seems to stand with no proportion of justice, that a man should be protected in life, limb, or estate, by any Law, that will not subject himsele to that Law.

It cannot be denied but that there is a twofold subjection; legall and locall: the legall subjection is due from every subject to his naturall Prince, the locall from any Forreigner to that Prince or State where his person doth reside. And this, though it be onely *pro tempore*, and the other during life: yet it doth for the time totally obstruct the operation of the other subjection; so that no King can command any subject of his living out of his Kingdome; but such subject of his is to be disposed of by the sole authority of that supreme power where he makes his Residence: And since the question is onely about the person of a King of Scotland, for I suppose they will not take upon them any authority to dispose of the Person of a King of England, I doe affirme that if a King of Scotland should have come into England before the union of both these Kingdomes, he

he had been instantly a subject of England and his Person to be disposed of by the sole authority of the Lawes of England. For either we must take him as a King or a subject, since betwixt them two there is no medium; as a King we cannot take him, unlesse we should commit Treason against our naturall Prince, and subject our selves to any but to him, it being most certaine, that there is the same relation betwixt the King and his Subjects, as betwixt the husband and his wife, and as no man can be said to be a husband but to his own wife, so no man can be said to be a King but to his own subjects; and therefore we cannot admit of any Regality in the person of a King of Scotland comming into England, unlesse at the same time to the same person we should confesse subjection. For that it is most true, that as none can be said to be *Rex sine Regno*, so no man can be said to be *Rex* but in *Regno*; Therefore if a King of Scotland comming as aforesaid into England, if against the Lawes of England he doe offend, by those Lawes of England he must be tryed, and by none other, For *ubi quis delinquit, ibi punietur*. And it is most sure, that we have disposed of the persons of Kings of Scotland comming into England, both living and dead. And if we may dispose of the person of a King of Scotland without the consent of the Kingdom of Scotland, much more may we dispose of the person of a King of England, he being now in England, without their priuity or advice. But if they have any power to dispose of him, it is because they are either our masters, or our fellows: if they be our masters, let them shew the time when they conquered us, or the price for which we were sold unto them: if they be our fellows, why come they not to our Parliaments? why contribute they not to our necessities? But as it is apparent that they being two distinct Kingdomes governed by two distinct Lawes, so they ought not to intermeddle one with anothers interest; but to content themselves with what doth naturally appertaine to each of them severally.

There is no doubt to be made, but that every husband hath as great an interest in the person of his wife, as any Subject hath in the person of his Sovereigne; and yet a man may lose that interest by some act of his Wives, as if she commit Felony, Murder, or Treason, the Law disposeth of her person, and her husband cannot claime any right, so much as to her dead body: so fareth it with a King, who by going out of his Kingdom, or by being taken prisoner by his enemies, his Subjects lose the interest they had in him, and he is at the disposall of his enemies *jure belli*. John King of England was cited to appeare at Paris to answer

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answer for the death of *Arthur Plantagenet* Duke of Britaine, whom he had murdered; the State of England would not let him goe, as holding it a great indignity and incongruity that a King of England should answer for any thing at Paris, right or wrong. The French answered, that they cited him not as King of England, but as Duke of Normandy; as King of England they acknowledged to have nothing to doe with him, he was in that respect without them; and beyond them, but as Duke of Normandy, which he held in fee of the Crown of France, he owed fealty and allegiance for the same to the Crown of France, and therefore ought to answer. The English replied, that if the Duke of Normandy did goe, the King of England must goe; and if the Duke of Normandy were beheaded, they knew well enough what would become of the King of England. Upon large debate hercof by all the Lawyers in France, it was resolved that if *John* had been in Normandy at the time of his summons; he ought to have appeared; but he being *Extra jurisdictionem Regni Francie* at the time of his summons, and *infra jurisdictionem Regni Anglie*, though legally he were a subject of France, yet locally he being in England, his summons was voyd, and he forfeited nothing by his non-appearance.

I will onely urge one argument more, deduced from a knowne maxime of the Law, not of England, but of Scotland also, which the Commissioners of Scotland the other day at the Conference did cite themselves, in my opinion much against themselves; and that is this, *Quand Duo Iura, imo Duo Regna* (saith a great Lawyer) *concurrant in una persona, equum est ac si essent in diversis*, which is no more then this, when two Kingdomes held by two distinct Titles doe concur in one and the same person, it is all one as if they were in two distinct persons. I suppose here is our very case; here are two Kingdomes, England and Scotland, held by two distinct Titles, which doe both concur in one person, in the person of King *Charles*; it is all one saith this rule and maxime of the Law; as if they were under two severall persons; why then put the case that there were one King of England and another of Scotland, should the State of Scotland have any thing to do to dispose of the person of a King of England, he being in England? I think you will say they could not.

Sir, I am sorry that our brethren have moved this question at this time; for all questions make debates, and debates differences; and this were a time for brothers to reconcile differences rather then to make them; we have now lived 44 yeeres, both under two Princes, and in all



all this time this question was never stirred in, till now; had it been stirred in, no question but it had been rejected. The people of England would have held it very strange that they could not have disposed of the person of their owne King, or that a King of England could not have gone from White-hall to Richmond or Hampton-court without the will and appointment of the Councell of Scotland: they would have thought they had made an evil bargaine by such a union. For before the union they might have disposed of the person of their Prince, but after, not. And since they conceived that by the addition of Scotland there was an addition of charge, they would have been very sorry withall to have an addition of servility.

Since the beginning of the World there was never before such a contention about the person of a King. The Greekes and Trojans did contend for a long time in fight about the dead body of *Parricidius*; which of them should have it. But here is not a contention about the dead body of a private man, but about the living body of a King; neither doe we contend as they did, who should have his person; but here you doe contend (as farre as I conceive) who should not have it. Your brethren of Scotland say positively they will not have the Kings person upon any conditions whatsoever. It is now above six months past that you voted in this house the standing of the Kings person; but the Lords refused to joyn with ye ever since untill this present year your selfe did Acquiesce as if you had repented of your former vote. Now he must be put upon you, and with such terms as his present Gardians please to allow of.

Truly it seems strange to me, that any Army of Scots in pay of the Kingdome of England, which by the Treaty ought to be governed by the joynt consent of the Committees of both Kingdomes upon the place, should in England take a King of England, without the privy of the English Committee, and convey him to Newcastle a Town likewise of England, & should there keep him for six whole moneths without the consent of both houses of Parliament; and when they finde it not convenient for them to keepe him any longer, then they will capitulate with you upon what conditions you must receive his person.

I never thought to have found a King of England, his person being in England, under any other protection but that of the Law of England; but now I finde him under the protection of a Scottish Army, whether they say he is fled for shelter, and that they cannot render him up in honour.

Sir,

Sir, If that Army of theirs be come into this Kingdom a Breach  
 Friends, and confederates (as we hope they are) then is every person in  
 that Army during the time of his stay here locally a subject of England  
 and such Children as are borne to them here are not Aliens but Deni-  
 sons; & not only local but legal subjects of this Kingdom. And therefore  
 they having gotten the King into their hands, they ought not  
 to capitulate upon what terms he should be delivered into your hands, then  
 if the Army of Sir Thomas Fairfax were in possession thereof, who if  
 they should deny the surrendering of the King unto you, but upon  
 condition, no question but it were capital.

They say, that by virtue of the Covenant they are obliged to defend  
 his Person and Authority. What his Authority is in Scotland them-  
 selves best know; but you only are to judge of it in England, since be-  
 ing not subordinate to any power on Earth, there is no power under  
 Heaven can judge you. The Covenant ties you to maintaine in the  
 first place the Rights of Parliament, and the liberties of the Kingdom;  
 and in the second place the Kings Person and Authority; and that  
 only in defence of the former, and not otherwise. And whereas they  
 expect the King should be received by you with Honour, Safety, and  
 Freedom, I beseech you, Sir, consider whether (as the case now  
 stands) his Reception with Honour can stand with the Honour of the  
 Kingdom; whether his safety be not incompatible with the safety of  
 the Common-wealth, and whether his freedom be not inconsistent  
 with the freedom of the people.

I pray (Sir) take heed least that bringing him in with Honour you  
 doe not dishonour your selfe, and question the very justice of all your  
 Actions; be wary in receiving him with safety you doe not there-  
 by endanger and hazard the Common-wealth; be advised least in  
 bringing him home with freedom, you doe not thereby leave the peo-  
 ple of England in thraldome.

I pray (Sir) first settle the honour, safety and freedom of the Com-  
 mon-wealth, and then the honour, safety, and freedom of the King;  
 so farre as the latter may stand with the former, and not otherwise.

Wherefore I shall conclude with my humble desire that you would  
 adhere to your former vote that is, that the King be disposed of as  
 both Houses of Parliament shall thinke fitting; and that you enter in-  
 to no Treaty either with the King or your Brethren of Scotland, least  
 otherwise thereby you retard the going home of their Army out of  
 England.

F I N I S.